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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,276	08/26/2003	David J. Forshee	3243-000003	5508
27572	7590	07/06/2004	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			BAXTER, GWENDOLYN WRENN	
		ART UNIT	PAPER NUMBER	
		3632		

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,276	FORSHEE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gwendolyn Baxter	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ .   | 6) <input type="checkbox"/> Other: _____ .                                  |

This is the first office action for application serial number 10/649,276, Retainer for Immobilizing a Bucket During Mixing, filed on August 26, 2003.

***Claim Rejections - 35 USC § 112***

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1. claim 1 "such as". A similar problem occurs in claims 3, 7, and 13.

In claim 1, line 2, "the time" lacks proper antecedent basis.

In claim 1, line 4, "a vertically axised retainer ring" should read -vertically axis retainer ring-. A similar problem occurs in claims 7 and 13.

In claim 1, line 15, "and the like". A similar problem occurs in claim 13.

In claim 1, line 19, "the user" lacks proper antecedent basis.

In claim 2, line 5, the pronoun "it" should be replaced by the proper noun to avoid any ambiguity. A similar problem occurs in claims 7, 12, and 14.

In claim 3, line 3, "a Morse-type taper". This recitation extends the scope the recitation so as to render it indefinite. A similar problem occurs in claims 4 and 9.

In claim 4, lines 5 and 6, "the mixing" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims are 1-17 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,877,208 to Kennard, Jr. in view of U.S. Patent No. 4,071,163 to Martin.

Kennard teaches a retainer comprising a vertically axis retainer ring (28) which forms a cylindrically-shaped socket into which a bucket (20) may be placed. Laterally outwardly extending, generally flat wings (14, 16) are formed on opposite sides of the ring. The ring has an interior, circularly-shaped wall surface having upper and lower edges. The bucket contains material to be mixed such as liquid paint and the like is inserted in the socket so that the bucket engages and frictionally locks to portions of the inner surface of the wall. The user of the retainer may step upon the wings to firmly press the wings and, thereby, hold the retainer, against a surface upon which the retainer may be positioned, and to position the user generally over the bucket so that the user may insert and hold a mixing device in the bucket for mixing the material while simultaneously holding the bucket against rotational or other movements that might otherwise have occurred if the bucket were free to move. The ring wall is formed of a resilient plastic material which compresses radially inwardly against the bucket for frictionally gripping the bucket and holding it against movement relative to the ring. The wings are formed with a flat upper surface upon which the user's feet may be positioned and the lower surface of the wings having downward extending protuberance for engaging against a ground support surface upon which the retainer is positioned. See figure 4. However, Kennard fails

to teach the interior wall being tapered and the ring formed of two concentric cylindrical walls joined together along the upper edges.

Martin teaches a ring (10) for holding a receptacle (50). The ring has an outer wall (32) and inner wall (12-28). This ring tapers downwardly and inwardly from the upper (34) to the lower edges (near 30), relative to the axis of the ring, with the diameter of the upper edge being larger than the anticipated diameter of a bucket or receptacle. The diameter of the lower edge, and the diameter of the lower edge being smaller than the anticipated diameter of the bucket or receptacle. This ring forms concentric generally cylindrically wall joined together along the upper edges and being free of each other at their lower edges too thereby form a circular socket having an inner wall and outer wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the ring as taught by Kennard to have incorporated the concentric cylindrical walls as taught by Martin for the purpose of holding a plurality of receptacles of varying sizes (col. 3, lines 1-4).

Regarding claims 3 and 10, it would have been obvious matter of design choice to have modified the Kennard by having the taper of approximately angle of two degrees, since applicant has not disclosed that having the taper at this specific angle solves any stated problem or is for any particular purpose and it appears that the taper would perform equally well with any acute angle.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller 2,936,926; Hollar 3,590,988; Zeiler, Jr. 3,642,239; Tilden D286,508;

Art Unit: 3632

Wischusen 4,726,553; Desjardins 4,998,696; Eshelman D383,271; Lytle 6,464,184 and Tropeano D474,404 teach retainers for holding a receptacle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 703-308-0702. The examiner can normally be reached on Monday-Wednesday, 8:00am -5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

June 28, 2004